



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

SW

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,165	09/30/2003	Olivier Carli	71247-0008	9820

7590

12/21/2004

CLARK & BRODY
Suite 600
1750 K Street, NW
Washington, DC 20006

EXAMINER

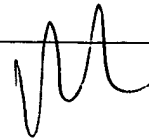
REIMERS, ANNETTE R

ART UNIT PAPER NUMBER

3732

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/673,165	Applicant(s) CARLI ET AL. 	
	Examiner Annette R. Reimers	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>04/22/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference numbers 3a, 3b, 3c, 3d and 3e of lines 20-29 of page 5 of the specification are not referenced in the drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. Examples of such errors follow:

In claim 1, lines 5-6, "the sagittal plane" and "means of stop in flexion-extension", lack proper antecedent basis. In addition, line 11, "means of assembly" lacks proper antecedent basis.

In claim 2, lines 5-6, "the other plate" and "the latter" lack proper antecedent basis.

In claim 3, lines 3-4, "the bearing surface", "the clearances" and "the spherical hole" lack proper antecedent basis.

In claim 6, line 2, "the profile" lacks proper antecedent basis.

In claim 9, line 3, "the clearances" lacks proper antecedent basis.

Applicant is advised to carefully reread the claims and correct all errors found therein.

Specification

The abstract of the disclosure is objected to because it includes phrases which can be implied, e.g. "The purpose of the invention". In addition the use of the word "means" in lines 5, 7, 10, 13, and 16 should be avoided. Furthermore, "(Figure to publish: Fig. 2)" at the bottom of the abstract should be removed, because it is not appear to be part of the abstract. Correction is required. See MPEP § 608.01(b).

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

Art Unit: 3732

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The specification is objected to because the various sections of the specification should be preceded by their respective headings. Correction is required.

The specification is further objected to as failing to comply with 37 CFR 1.84(p)(5), which states: "Reference characters not mentioned in the description shall not appear in the drawings. Reference characters mentioned in the description must appear in the drawings." Reference numbers 8, 11, and 14 of Figures 4 and 7 are not referenced in the description. Correction is required.

The disclosure is also objected to because of the following informalities: Reference number 20 has inconsistent terminology, i.e. hole and bearing surface. Please clarify whether reference 20 refers to hole or bearing surface.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-9, as understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Ramadan et al. (U.S. Patent Number 6,517,580), cited by applicant.

Ramadan et al. disclose a disk prosthesis for cervical vertebrae comprising a first and second plate, e.g. parts 2 and 3 of Figure 1, intended to be fixed on neighboring cervical vertebrae, e.g. part 20 of Figure 1. The disk prosthesis has a means of articulation inserted between the two plates, e.g. parts 5 and 7 of Figure 1. The means of articulation comprises a means authorizing flexion-extension movements in a sagittal plane (see Column 4 lines 6-12), a means authorizing lateral inflexion movements in a plane perpendicular to the sagittal plane (see Column 4 lines 6-12), a means authorizing relative rotation movements between the first and second plates according to an angular clearance limited by means of stop in relative rotation (see Column 3 lines 57-63), and a means of assembly with the first and second plates so as to form a prosthesis consisting of a single piece (see Column 3 lines 30-33). In addition, the means of articulation comprises a hole with a partially spherical profile established inside a chamber prepared in a plate (see Figure 5), and a bearing surface with a profile complementary to the hole formed on the other plate (see Figure 5). Furthermore, the means authorizing flexion-extension movements comprises an axis that extends in the sagittal plane (see Figures 2-3). The clearances have a determined diameter to enable definition of the angular clearance of the relative rotation movements between the first and second plates (see Column 3 lines 52-63 and Column 4 lines 18-22). A female geometric shape on the first plate and a complementary male geometric shape on the second plate form the means of stop in relative rotation, e.g. parts 6 and 8 of Figure 1. The means of stop in lateral inflexion are formed by the plates coming in contact with each other (see Column 4 lines 24-25). The bearing surface is prepared in the first insert, e.g. part 5 of Figure 1

Art Unit: 3732

assembled on the first plate and made in the shape of a stub, e.g. part 6 of Figure 1 and the hole is prepared in the second insert, e.g. part 7 of Figure 1 assembled on the second plate and made in the shape of a ring, e.g. part 8 of Figure 1. In addition, the inserts, parts 5 and 7 of Figure 1 are made of ceramic or metal (see Column 3 lines 64-66 and Column 4 lines 1-4).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday, 9:00AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR

AR


EDUARDO C. ROBERT
PRIMARY EXAMINER